

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of VALLEY MOTOR LINES, INC., a corporation, for a certificate of public convenience and necessity to operate an auto truck service for the transportation of property as a common carrier, for compensation, over the public highways between San Francisco, Oakland, Alameda, Emeryville, Berkeley, San Leandro, Manteca, and points between Manteca and Fresno, California, both inclusive, Sacramento and Stockton, on the one hand, and Fresno, Kerman, Mendota, Firebaugh, Dos Palos, Los Banos, Gustine, Newman, Crows Landing, Patterson, Vernalis, and all points intermediate between Fresno and Vernalis, California, via Kerman, Firebaugh and Los Banos, California, on the other hand, and between certain other points in the State of California.

ORIGINAL

Fifth
Amended
Application
No. 18237

- W. S. Johnson and D. J. Buttles, for Applicant.
- E. W. Hobbs, for Southern Pacific Company,
Pacific Motor Transport Co.,
Central California Traction Co., Protestants.
- H. W. Hobbs and E. F. Salisbury, for Merchants
Express and Drayage Co., Protestants.
- Robert Brennan, W. F. Brooks and Berne Levy, for
The Atchison, Topeka & Santa Fe Railway,
Modesto and Empire Traction Company and
Sunset Railway Company, Protestants.
- Mc Cutchen, Olney, Mannon & Greene, by Carl I. Wheat,
for The River Lines, Protestant.
- E. E. Douglass, for John T. Smith Transfer Company,
Protestant.
- A. B. Allen, for Bekins Van Lines, Protestant.
- L. N. Bradshaw, for Western Pacific Railroad Company,
Sacramento Northern Railway and Tidewater Southern
Railway, Protestants.
- Harry See, for Order of Railway Conductors,
Brotherhood of Railway Trainmen,
Brotherhood of Locomotive Firemen and
Brotherhood of Locomotive Engineers, Protestants.
- W. C. Stone, for Sacramento Chamber of Commerce, as its
interest may appear.
- Geno Antichi, for Sacramento-Corning Freight Lines, Ltd.,
interested party.
- J. E. Monro, for Sacramento Motor Transport Company and
Southern Pacific-Golden Gate Ferries, Protestants.

BY THE COMMISSION -

O P I N I O N

Applicant, by its fifth amended application, seeks a certificate of public convenience and necessity for the transportation of property as a common carrier for compensation over the public highways as follows:

1. Sacramento, Stockton and French Camp, on the one hand, and all points presently served by applicant, Valley Motor Lines, Inc., under and by virtue of the operative rights granted in Application No.16176, on the other hand, except that no service is proposed herein, between:

- (a) Sacramento and Stockton.
- (b) Sacramento and Stockton, on the one hand, and San Francisco, Oakland, Alameda, Emeryville, Berkeley and San Leandro, on the other hand.

2. Sacramento, Stockton, French Camp, and all points presently served by applicant, Valley Motor Lines, Inc., under and by virtue of the operative rights created in Application No.16176, on the one hand, and Biola, Kerman, Mendota, Firebaugh, Dos Palos, Los Banos, Custine, Newman, Crows Landing, Patterson, Westley and Vernalis, California, and all points intermediate between Fresno and Vernalis, California, on the other hand, via Los Banos, California, and the routes shown on Exhibit "C", attached hereto, with the right to transport locally between all points between Fresno and Vernalis, via Los Banos; provided, however, that no service is proposed herein between Fresno, Kerman and intermediate points.

The certificate sought covering the above named operations is sought as an enlargement of the operative rights heretofore granted applicant by Decisions Nos.23949 and 24289, on Application No.16176, issued August 16, 1931, and December 7, 1931, respectively. (36 C.R.C. p.540).

Public hearings thereon were conducted at Sacramento, San Francisco, Modesto, Merced, Newman, Los Banos, Dos Palos and Fresno by Examiners Satterwhite and Williams and the matter was finally submitted on briefs January 18, 1935. Briefs having been filed, the matter is now ready for decision.

original
The application was filed on June 25, 1932, and hearings were conducted at various times to and including January 18, 1935. During these hearings applicant reduced the service proposed in the original application until nothing remained except as stated in the preceding paragraphs. While protestants urge that the methods of applicant were equivalent to lack of diligence indicating bad faith, we cannot find from the record that this is a fact. After the final (fifth) amendment applicant prosecuted the application to submission.

During the pendency of this application and before submission protestant, Pacific Motor Trucking Company, filed its application (Application No.19598), on August 24, 1934, to establish co-ordinated truck and rail service for less than carload shipments between Tracy and Fresno and intermediate points. This application was granted by Decision No.27744, February 11, 1935.

During the hearings upon this application applicant herein, Valley Motor Lines, Inc., appeared and, without objection to the granting of the certificate, submitted an offer to Pacific Motor Trucking Company and to the rail carriers to perform all the truck service sought to be performed by Pacific Motor Trucking Company under contract with rail carriers between Tracy and Fresno should Valley Motor Lines, Inc. receive a certificate under its application (No.18237) then pending action. This offer was rejected by applicant Pacific Motor Trucking Company and the rail lines on the ground, among others, that the rail carriers did not wish to mingle their traffic with the traffic of a competing carrier, thus opening to that carrier acquisition of the business now being bestowed upon rail carriers.

While Pacific Motor Trucking Company's application was pending, applicant herein, Valley Motor Lines, Inc., filed its application (No.19069), seeking a certificate for the transportation of property between Sacramento and Stockton in order to connect with its

services between San Francisco, Stockton and Manteca and for distribution along its route along the east side of the San Joaquin valley. This application was granted, after hearings, by Decision No. 27640, on January 7, 1935.

Thus, by separate applications, applicant herein obtained a limited service between Sacramento and Stockton and protestant rail carriers obtained, through certificate granted to Pacific Motor Trucking Company, a complete service between Tracy and Fresno, both vital parts of the instant application. Consequently, when hearings were resumed in the instant application it was greatly reduced in area and design and presented an entirely different picture from the original application as filed in 1932.

At the hearings the oral testimony of 117 witnesses was received and the testimony of two score more received by stipulation. Of the oral witnesses 50 were on behalf of applicant, including J. C. Sommers, Freight Traffic Manager of Stockton Chamber of Commerce; W. G. Stone, Manager, Transportation Department, Sacramento Chamber of Commerce; M. T. Lohse, Secretary, Industrial Department, Fresno County Chamber of Commerce, and (by stipulation), Lawson Allen, Secretary-Manager, Merchants' Association of Fresno. Their testimony, affirmatively, shows a need for the service proposed by applicant, particularly on movements from these distributing centers to San Joaquin valley points. The development of water borne traffic by Stockton at its harbor indicates this community is taking rank with other distributing centers and requires highway facilities. Other witnesses from Sacramento, Stockton and Fresno testified to their individual needs and witnesses at Dos Palos, Los Banos and Newman testified as to the receivers' needs on the west side route. This affirmative showing was largely for a truck service between the different points but included testimony of those who use Valley Express Company service to the same points.

Applicant presents, in its brief, a summary of the probable available tonnage monthly, should a certificate issue, excluding the testimony of certain shippers who could not estimate the quantities. From this it appears that there would be available 77,000 pounds daily. But this included shipments of rice aggregating 60,000 pounds, of which at least half -- that picked off highway in fields -- is not available under the present application as applicant has withdrawn its offer to pick up within a distance of 15 miles on either side of the route. It is doubtful also if the remaining portions of rice movements, except a few thousand pounds, would be available. However, there still remains available from five to ten tons on other commodities.

Between San Francisco and East Bay cities, averaging 69,788 pounds daily available, a similar computation is necessary for the same reason and the quantity thus reduced to about 3000 to 12,000 pounds, or 4 to 6 tons, daily.

Between Fresno and all points served by applicant, including "west side" points, an available traffic of 13,196 pounds, or 6.5 tons daily, is not subject to similar computations, as rice movements are not involved. The apparent tonnage, therefore, aggregates only 15.5 tons daily. This is less than witness Frasher, manager of applicant company, estimated in his Exhibit No.22, which gave the estimated tonnage of 16.5, including all "west side" points and Sacramento-Stockton service. The difference is not important even in computing the application of the rates proposed to test the feasibility of the operation, which appears probably better than self sustaining.

Such a showing produces the concrete fact that a substantial portion of the public, represented by the witnesses testifying (including some presented by protestants), desires such a choice between rail-truck and all truck services and will contribute tonnage apparently sufficient to support it. Witness Frasher

estimated the daily profits on the tonnage basis he assumed of \$12.22. Computation does not seem to alter this estimate materially lower.

Protestants urge the adequacy of the present coordinated rail and truck service as authorized by Decision No.27744, dated February 11, 1935, granting truck rights between Tracy and Fresno to protestant Pacific Motor Trucking Company. This contention has merit only as against additional local point-to-point truck service. The record does not sustain two truck services in competition with each other.

Applicant is the underlying carrier of Valley Express Company, an express corporation, which, according to the testimony of Harold D. Frasher, its Manager, serves about two-thirds of the State of California and also conducts operation in other western states. The instant application is being pressed palpably for the benefit and use of the express company,- in fact, the ownership of Valley Motor Lines, Inc. and Valley Express Company, a corporation, is identical. The trucking operation is the servant of the express corporation. Any certificate granted to applicant would be used for the transportation of property in the custody of Valley Express Company. If the express company, which has rates on file with this Commission for practically all points between Tracy and Fresno, continues its deliveries to such points, it must necessarily use the rail services in the absence of any other. Should it be required to do so, it must perforce mingle its shipments with those of its competing carriers, both express and rail, and subject its business to the same danger of acquisition as pointed out by rail lines in their objections to applicant's service. Only by possessing a certificate authorizing the transportation of traffic in the custody of Valley Express Company may applicant be put on the same basis as the competing rail carriers. The record does not show the need of two local truck carriers in the area now served by Pacific Motor Trucking

Company. Applicant, upon the record, appears entitled only to the privilege of transporting express company shipments as an extension of its present route between Manteca and Fresno to points on the west side route, Vernalis to Fresno.

Applicant Valley Motor Lines, Inc. is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

O R D E R

Valley Motor Lines, Inc. having made application, as above entitled and as amended by its fifth amended application, public hearings having been held, the matter having been duly submitted on briefs, which have been filed and the matter now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment of automotive service for the transportation of property as a common carrier for compensation over the public highways, as herein designated, between

1. Sacramento, Stockton and French Camp, on the one hand, and all points presently served by applicant, Valley Motor Lines, Inc., under and by virtue of the operative rights granted in Application No. 16176, on the other hand, except that no service is proposed herein, between:

- (a) Sacramento and Stockton.
- (b) Sacramento and Stockton, on the one hand, and San Francisco, Oakland, Alameda, Emeryville, Berkeley and San Leandro, on the otherhand.

2. Sacramento, Stockton, French Camp, and all points presently served by applicant, Valley Motor Lines, Inc., under and by virtue of the operative rights created in Application No. 16176, on the one hand, and Biola, Kerman, Mendota, Firebaugh, Dos Palos, Los Banos, Custine, Newman, Crows Landing, Patterson, Westley and Vernalis, California, and all points intermediate between Fresno and Vernalis, California, on the other hand, via Los Banos, California, and the routes shown on Exhibit "C," attached to the application, with the right to transport locally between all points between Fresno and Vernalis, via Los Banos; provided, however, that no service is proposed herein between Fresno, Kerman and intermediate points; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor hereby is granted Valley Motor Lines, Inc., subject to the following restrictions:

(A) No service is to be rendered between Sacramento and Stockton, via Lodi, Galt and Arno, except between Sacramento and Stockton and not between terminals named and any intermediate point, nor between any intermediate points.

(B) Applicant shall not make or enter into any contract, agreement or understanding, directly or indirectly, with Valley Express Company or any express or motor truck company for the transportation between Stockton and Sacramento of any traffic which originates at San Francisco bay points and is destined to Sacramento, or which originates at Sacramento and is destined to San Francisco bay points, at rates to the general public lower than the combination of local rates over Stockton.

(C) The order herein shall not be construed as authorizing applicant to link up, join or consolidate the right herein granted with any of the operating rights now possessed by applicant, except as herein specifically authorized.

(D) The certificate herein granted does not authorize the use of the route via Pacheco Pass, authorized by Decision No. 20727, dated February 18, 1929, on Application No. 14474, for any other purpose than originally granted and as modified by Decision No. 27385, on Application No. 19580, except that

applicant may interchange such traffic as it may legally carry for Valley Express Company, or the vehicles containing same, only, at Los Banos, when such cargo is destined between Los Banos or Fresno and points intermediate, or Los Banos and Vernalis and points intermediate and only to such points as have been heretofore authorized in this certificate and are now served by Valley Express Company or may be served legally by proper extension of said Valley Express Company's express certificate.

(E) The service herein authorized between Vernalis and Fresno is restricted to the transportation of traffic consigned under contract with applicant, duly filed with this Commission, by Valley Express Company under its rates, and for no other traffic, provided, this restriction shall not apply to any other portion of the certificate herein granted, except as may be herein specifically stated, and subject to the following conditions:

1. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof, stipulating in said acceptance that the certificate herein granted and the restrictions, and each of them therein imposed, are accepted as an extension and enlargement of the rights granted applicant by Decision No.20727, on Application No.14474, by Decision No.27385, on Application No.19580, by Decision No.23949, on Application No.16176; and further stipulating that the right granted applicant between Sacramento and Stockton herein is accepted in lieu of the right granted by Decision No.27640, on Application No.19069; and, further, that all the restrictions on any right, other than as herein altered, modified or removed, shall remain in full force and effect.
2. Applicant shall file, in triplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than ten days' notice to the Commission and the public a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which, in volume and effect, shall be identical with the rates and rules shown in the exhibit attached to the fifth amended application, insofar as they conform to the certificate herein granted, or rates satisfactory to the Railroad Commission.

3. Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than five days' notice to the Commission and the public, time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.

4. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

5. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 27th day of April, 1935.

Iron Whelan

M. J. Lee

M. B. Harris

William C. Hart

Frank R. Stevens

COMMISSIONERS